IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 229 of 2006

KALWANT SINGH
V/S
LRS.OF RISHAB DASS

Mr. GR GOYAL, for the appellant / petitioner

Date of Order : 20.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The two learned courts below have decreed the suit for eviction on the ground of default as other grounds of eviction are said to have been given up.

From the perusal of the judgments of two learned courts below it transpires that vide order dt. 5.1.1993 determination of rent was made under Section 13(3) of the Rajasthan Premises (Control of Rent & Eviction) Act, and since the defendant committed default, thereafter, application was filed under Section 13(5) of the Act whereupon vide order dt. 12.4.2004, defence against eviction was ordered to be struck off. Thereafter on 24.2.2005 the plaintiff gave up all other grounds of eviction. The learned trial court found that after

determination of rent, the defendant had deposited rent for the month of October & November, 1996 on 20.12.1996, the rent of January, 1997 was not deposited. Likewise the rent for the month June & July 1997 was deposited on 6.8.1997, then the rent of September, October, 1997 was deposited on 11.11.1997, then rent for November-December, 1997 was deposited on 7.1.1998, and rent for the months May, and June 1998 was deposited in December, 1998 and rent for December, 1998 and January, 1999 was deposited on 18.12.1999. Likewise there were other defaults, and considering these facts it was found that rent was not deposited month by month by 15th of each succeeding month, and therefore, the defence was struck off, and accordingly on that ground finding the defendant to be defaulter the decree for eviction had been passed.

In appeal the plaintiff appears to have simply challenged the judgment on the ground of decision on issues no. 1 and 6 being not passed on proper appreciation of evidence. Significantly it is not shown that the order of the learned trial court dt. 12.4.2004 striking out the defence was ever challenged by raising an appropriate ground. Of course, an application under O. 41 Rule 27 was filed, and the documents were taken on record. However, it was found by the learned lower Appellate Court that vide order dt. 5.1.1993 the defendant was directed to deposit Rs. 2740/- by way of rent and interest. However, thereafter

he did not continue to deposit the rent month by month, therefore, the defence was struck off. Thus the decree of the learned trial court was maintained.

Arguing before me learned counsel simply read the cross examination of the plaintiff, and tried to point out that the plaintiff has pleaded ignorance about earlier rent having been paid, so also about rent of May, 1999 onwards having been deposited in the Bank.

Significantly, nothing was submitted as to how the order dt. 12.4.2004 striking out the defence is wrong, or requires any interference, nor was it shown that the rent which is said to have been in default during pendency of the suit as noticed by the learned trial court, and the learned lower Appellate Court was not in default, or was deposited in time. That being the position, the order striking out the does survive, and consequently the decree for eviction has rightly been passed.

Thus, the appeal does not involve any substantial question of law. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/